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UNCLAS SECTION 01 OF 03 PARIS 001086

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FROM USOECD PARIS

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E.O. 12958: NA

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SUBJECT: OECD/NEA MULTILATERAL NUCLEAR ENVIRONMENT
PROGRAM IN RUSSIA (MNEPR) COMMITTEE MEETING

Summary

The OECD Nuclear Energy Agency (NEA) Multilateral Nuclear Environment Program in Russia (MNEPR) Committee Meeting was held 19-20 January at the NEA Headquarters in Issy-Les-Molineaux, France. The Netherlands reported its recent submission of its ratification document to the Depositories. The Committee reached consensus on proffering an invitation to Nordic Environmental Finance Corporation (NEFCO) to become a Party. The Russian diplomatic note on taxation was accepted with the Swedish co-chairperson noting that it did not change the rights and obligations of the Parties. The Joint Interpretation of the MNEPR Framework Agreement was accepted by the Committee, with the subsequent steps being for the co-chair to provide it to one of the Depositories, and for the Depository to then promulgate it to the Parties. The Russian co-chairperson clarified the position of the Russian Federal Atomic Energy Agency (ROSATOM). A Legal Task Force was reconstituted to examine procedural issues.
End Summary.

Contributing Parties Pre-Meeting

¶1. A meeting of the Contributing Parties was held at OECD Headquarters prior to the full Committee meeting chaired by Patrick Reyners, Head of Legal Affairs, NEA. Swedish Committee representative Nystrom, was re-elected as the Committee co-chairperson representing the donor Parties. All Parties agreed to accept the Joint Interpretation of the MNEPR Framework Agreement. German Committee representative Ranau, and legal counsel Pelzer, emphasized the need for the co-chairpersons to provide the Joint Interpretation to one of the two Depositories (the Minister of Foreign Affairs of the Russian Federation and the Secretary General of the OECD). The Joint Interpretation would then be promulgated by the Depositories to the Parties, who would in turn convey their confirmation of the document. While it was understood that the Russian Federation might have to go through a ratification procedure, the Germans offered that they would likely provide their confirmation via a 'note verbale' or diplomatic note. Reyners offered that the confirmation did not have to be very formal and could even be in the form of an email message.

¶2. The donor Committee members reviewed the Russian diplomatic note on taxation and agreed to accept the latest version. The U.S. Committee member stated that the USG was willing to accept it on the belief that it would not be possible to obtain any further improvements to the text and understanding the importance to other Parties to resolve the matter. He noted that the Russian text version of the diplomatic note is the controlling text, rather than the English version, notwithstanding MNEPR provisions that English text prevails. Secondly, it was suggested that the co-chair reiterate to the Russian delegation that the diplomatic note was merely a description of procedures the Russians have put in place and do not limit or modify Parties rights to such exemptions, which are established in the Agreement. The co-chair and other Committee members concurred. The donor Committee members reviewed the Joint Interpretation of the MNEPR Agreement and reached consensus on its acceptance.

¶3. Reyners noted that the NEA MNEPR administrative costs had been supported during the past year through a generous contribution from Norway. He suggested that if each Contributing Party could provide an equally apportioned amount, calendar year 2005 could be covered. He offered that donations in the amount of 3,000-5,000 Euros should cover the 2005 expenses.

Finnish Committee representative Kaupila, countered that since these appeared to be annual expenses of the NEA, the costs should be covered within the annual OECD/NEA budget. After further discussion, this issue was deferred without any determination.

2005 MNEPR Committee Meeting

14. The initial item of the Committee meeting was the election of the co-chairs. Nystrom had been selected as co-chair for the Contributing Parties and Russian Committee member Antipov (Vice Chief, ROSATOM), was elected as co-chair for the Russian Party. After general administrative issues were concluded, the discussion moved to the issue of inclusion of the Contact Experts Group (CEG). Under the Framework Agreement, the Committee may decide to admit as Observers, an interested state, inter-governmental organization or regional economic integration organization being subject to public international law not party to the Agreement (Article 4, para 5). Of specific concern was the inability to invite the CEG as an Observer, since it did not meet these requirements. After discussion, the issue was placed under the examination of a newly reconstituted Legal Task Force.

15. The Netherlands Committee member stated that his country had deposited its instrument of ratification on 13 January 2005. The UK, the European Community, the European Atomic Energy Community, Germany, Belgium and the U.S. have yet to deposit their instruments of ratification, acceptance or approval.

16. The intention of NEFCO to accede to the Framework Agreement was then discussed. The Committee reached consensus on the accession of NEFCO and an invitation was duly proffered.

17. The committee accepted the Russian Diplomatic Note on Tax Exemption (No.5558/dvbr). This note dealt with the exemption from value added tax and other taxes on equipment and goods purchased within the territory of the Russian Federation for implementation of projects within the framework of the Agreement. It also applied to services rendered within the territory of the Russian Federation for the same. The exemption shall be provided by the Russian Party at the time of the transaction (i.e., at the source). Co-chair Nystrom noted that this diplomatic note did not modify any rights or obligations under the MNEPR Agreement.

Joint Interpretation of the MNEPR Framework Agreement

18. The Committee concurred on the Joint Interpretation of the MNEPR Framework Agreement. It was also understood that only representatives of the Parties could be elected chairpersons, as noted in Article 4, paragraph 4. Co-chair Nystrom stated that the Joint Interpretation would be considered to be constructively delivered to the Depositories and constructively provided by the Depositories to the Parties. After the meeting, Nystrom clarified his comments to the U.S. and German Committee members by agreeing that the Joint Interpretation would actually be provided to at least one of the Depositories and then be sent by one of Depositories to the Parties. He concurred that the Depositories would have to provide the Joint Interpretation to the Parties in order for the Parties to officially respond with their respective concurrences.

Clarification of ROSATOM's Status

19. Russian Co-Chair Antipov clarified that ROSATOM was the legal successor to MINATOM (the Ministry of Atomic Energy). He had been requested to clarify ROSATOM's relation in relation to the Annex to the Protocol on Claims, Legal Proceedings, and Indemnification since MINATOM is cited therein as being the provider for the indemnity confirmation letter to be provided to Parties. Different understandings had been developed among Parties regarding ROSATOM's status. Antipov further noted that ROSATOM has the characteristics of a ministry but also has the status of an agency. It had been moved out of the Ministry of Energy and now was under the direct responsibility of the Prime Minister. He noted that a diplomatic note should have been delivered to the Parties providing official designation of ROSATOM's status.

¶10. Antipov then went on to the question concerning the qualifications of Committee members. He initially wanted to know whether the Committee members present had been properly selected/appointed by their respective governments. NEA Legal Director and Secretariat member Reyners responded that all Committee

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members had been properly accredited and seated. Antipov then suggested that there be a more formalized process, such as written letters from respective Ministries of Foreign Affairs so denoting the Committee members. He went on to try to have the MNEPR Committee determine which national ministry would handle matters of spent nuclear fuel and radioactive waste within the Parties. This maneuver was rebuffed, and Reyners moved that the question of accreditation of Committee members be reviewed by the Legal Task Force.

¶11. Antipov then questioned the paper on identification of "good practices" in implementing agreements or contracts. He took umbrage that the Russian Federation had not been consulted and wanted to be included in any such review. The NEA Secretariat and the Swedish Co-Chair stated that the work would continue further with inclusion of Russian input.

¶12. No decision was taken on the venue and time for the next MNEPR Committee meeting. It was generally agreed that unless a Party called for a meeting sooner, that the next Committee meeting would be held in early 2006. The Finnish Committee member had tentatively offered Helsinki as a venue. The Netherlands and Belgium offered that the March/April time period would be best, due to competing requirements for Committee members.

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